

### **REMARKS**

Claims 2, 4-13, 15-17, 22, 24, 25, 29, 31-40, 42-44, 49, 51, 52, 56, 58-67, 69-71, 76, 78, 79 are pending. Claims 1, 11, 22, 24, 29, 38, 49, 51, 56, 65, 76 and 78 are independent claims. In the Office Action, claims 56, 58-67, 69-71, 76, 78 and 79 were rejected under 35 U.S.C. § 101 because the claimed invention is directed to non- statutory subject matter. This is the only rejection of claims 56, 58-67, 69-71, 76, 78 and 79, and no other claims were rejected in the Office Action.

In view of the following remarks, all claims are in condition for allowance over the references of record. Therefore, this response is believed to be a complete response to the Office Action. However, Applicants reserve the right to set forth further arguments supporting the patentability of their claims, including grounds of rejection and/or the separate patentability of the dependent claims not explicitly addressed herein, in future papers.<sup>1</sup>

Applicants have amended claims 56, 58-67, 69-71, 76, 78 and 79 as suggested by the Examiner at page 3 of the Office Action. Further, Applicants believe that the claims are patentable under the standards set forth by the Supreme Court in *Bilski v. Kappos*, No. 08-964 (June 8, 2010), and are consistent with the Interim Guidelines promulgated by the Office on July 27, 2010. Therefore, the rejection of those claims should be withdrawn.

In addition, Applicants have considered the Examiner's suggestion that Applicants amend their Specification. (Office Action, pages 3-4.) Applicants do not believe that such amendment is necessary. As Director Kappos stated in the Notice on Subject Matter Eligibility of Computer Readable Media, 1351 Official Gazette 212 (February 23, 2010):

A claim drawn to such a computer readable medium that covers both transitory and non-transitory embodiments may be amended to narrow the claim to cover only statutory embodiments to avoid a rejection under 35 U.S.C. § 101 by adding the limitation "non-transitory" to the claim. Cf. *Animals - Patentability*, 1077 Off. Gaz. Pat. Office 24 (April 21, 1987) (suggesting that applicants add the limitation "non-human" to a claim covering a multi-cellular organism to avoid a rejection under 35 U.S.C. § 101). Such an amendment would typically

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<sup>1</sup> As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, assertions as to dependent claims, etc.) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such assertions/requirements in the future.

not raise the issue of new matter, even when the specification is silent because the broadest reasonable interpretation relies on the ordinary and customary meaning that includes signals per se. The limited situations in which such an amendment could raise issues of new matter occur, for example, when the specification does not support a non-transitory embodiment because a signal per se is the only viable embodiment such that the amended claim is impermissibly broadened beyond the supporting disclosure.

Here, Applicants believe that at least paragraph 84 of their Specification provides ample support for the presently-recited medium. Inasmuch as the present amendments simply further define the claimed medium as limited to non-transitory machine-readable media, Applicants believe that, consistent with the foregoing Notice, the Specification provides adequate support for the claims in their current form.

### **CONCLUSION**

All rejections have been addressed. In view of the above, the presently pending claims are believed to be in condition for allowance. Accordingly, reconsideration and allowance are respectfully requested and the Examiner is respectfully requested to pass this application to issue.

It is believed that any fees associated with the filing of this paper are identified in an accompanying transmittal. However, if any additional fees are required, they may be charged to Deposit Account 18-0013, under order number 65632-0210. To the extent necessary, a petition for extension of time under 37 C.F.R. 1.136(a) is hereby made, the fee for which should be charged against the aforementioned account.

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Respectfully submitted,

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